IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DR. DABNEY GRAY,

Plaintiff,

v. NO. 1:96CV49-S

DR. CLYDA S. RENT, et al.,

Defendants.

OPINION

In this case, plaintiff alleges that defendants violated various constitutional and statutory rights in conn of job duties and the nonrenewal of his employment contract. Presently before the court are defendants' motio summary judgment.

FACTS

The facts of this case are essentially undisputed and remain unchanged from those found at the prelimin on August 2, 1996. Briefly, the facts are these: the plaintiff, Dr. Dabney Gray, began teaching at Mississipp 1992, as an assistant professor of English. At that time, Dr. Gray was advised by letter that his duties could i or service assignment[s]." He was not guaranteed full-time teaching responsibilities.

At the heart of this case is an incident which occurred in October, 1994. While in the school library, a st she could improve her prose writing skills. In response to the student's questions, Dr. Gray referred to a forr

his class, explaining that

although the student was an accomplished poet, she found expository writing very difficult. The student to wh overhead these comments as she was walking through the library. She confronted Dr. Gray and later formally de terminate his employment and that he issue a public apology.

After negotiations, Dr. Gray issued a written apology to the student and agreed to attend a diversity wo Gray failed to attend the workshop. Shortly thereafter, the university informed Dr. Gray that his contract wo following school year and relieved him of his teaching duties for the duration of the school term. Several factor led to the nonrenewal decision, including Dr. Gray's failure to attend the workshop, his breach of the studer regarding her grade and class performance, his inappropriate use of profanity in the classroom, his carrying c campus, and his linguistic theories linking writing abilities and race. The instant suit ensued alleging violations Amendments, 42 U.S.C. § 1981, Title VII, and the Mississippi Constitution.

DISCUSSION

1. Eleventh Amendment Immunity

The court begins with the issue of Eleventh Amendment immunity. Generally, the Eleventh Amendm a State against suits in federal court by a citizen of the State against the State or a state agency or department." 758, 760 (5th Cir. 1995). For Eleventh Amendment purposes, MUW is an agency of the State of Mississippi, Rent, Dr. Susan Kupisch, Dr. Thomas Richardson, and Dr. Bridget Pieschel are state officials. *Roos v. Smith*, (S.D. Miss. 1993). As to the bulk of plaintiff's claims, a monetary damage award may not be imposed against this is equally true as to any award of prospective relief against MUW, whether arising under federal or state

School & Hospital v. Halderman, 465 U.S. 89, 100 (1984); *Saahir*, 47 F.3d at 761; *Harris v. Angelina County* Cir. 1994). *See also* 1B Martin A. Schwartz, *Section 1983 Litigation: Claims and Defenses* §§ 8.1-14 (3rd ed. to this is with regard to plaintiff's Title VII claim, as that act "clearly abrogated the States' Eleventh Amendn *State of Louisiana*, 150 F.3d 431, 434-35 (5th Cir. 1998).

As to Rent, Kupisch, Richardson, and Pieschel, "[u]nder the authority of *Ex parte Young*...and later seeking prospective injunctive relief based on federal constitutional violations may be brought against stat capacities." *Harris*, 31 F.3d at 337-38. *See also Saahir*, 47 F.3d at 760-61 (acts by state officials contrary to fed by state and suits seeking to enjoin such acts are not suits against state; therefore, suit challenging constitutional is not one against state and is not barred by Eleventh Amendment) (citing *Ex parte Young*, 209 U.S. 123 (190 therefore not accorded Eleventh Amendment immunity in that context. However, any state law claims agains official capacities are barred by the Eleventh Amendment. *Pennhurst*, 465 U.S. at 121; *Saahir*, 47 F.3d at 7 *Department of State Police*, 491 U.S. 58, 71, 71 n.10 (1989) (state, its agencies, and its officials acting in thei "persons" under § 1983, except "a state official in his or her official capacity, when sued for injunctive relief, 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State'").

The court therefore finds (1) that MUW is entitled to Eleventh Amendment immunity on all federal a case, except plaintiff's claims under Title VII, and (2) that Drs. Rent, Kupisch, Richardson, and Pieschel in t entitled to Eleventh Amendment immunity on any state law claims but not on the federal claims for prospective turns to the Title VII claim.

2. Title VII

In his complaint, plaintiff alleges that defendants did not renew his contract because of his race. More s if he had been black and made racially suggestive comments, as discussed more fully below, he would not ha fashion. Plaintiff has absolutely no evidence to support this subjective belief, and therefore, summary judgme in favor of the university and defendants in their official capacities. *See Elliott v. Group Medical & Surgical S* (5th Cir.1983) (subjective belief of discrimination, no matter how genuine, is insufficient for judicial relief). A individual capacities, plaintiff does not contest that they are not statutory employers within the meaning o dismissal of them is appropriate as well. *See Grant v. Lone Star Company*, 21 F.3d 649 (5th Cir.), *cert. denie*

3. Qualified Immunity

In a § 1983 suit, the court must make two separate inquires. First, it must determine "whether the plaint of a clearly established constitutional [or statutory] right." *Williams v. Bramer*, 180 F.3d 699, 702 (5th Cir. 19 a constitutional or statutory right has been violated, it must next ascertain "whether the governmental official reasonable." *Williams*, 180 F.3d at 702. "Qualified immunity shields an official performing discretionary fu liability, provided [her] actions meet the test of objective legal reasonableness." *Id*. at 702-03. Reasonablenes legal rules that were clearly established at the time the actions were taken." *Id*. at 703.

The court begins with plaintiff's First Amendment claim. To prove a First Amendment violation, Dr. C speech was constitutionally protected and (2) his speech was a motivating factor in the decision to discipline constitutionally protected, plaintiff, as a public employee, must show that the speech in question involved a ma that his interest in commenting on such matters outweighed defendants' interest in promoting the efficiency perform. *Thompson v. City of Starkville*, 901 F.2d 456 (5th Cir. 1990). For purposes of this motion, defend

that Dr. Gray couched his speech as he alleged in the complaint:

> [Plaintiff] has said to some students in the past that those who come from a basically oral culture wit might have certain problems with standard written American English; however, if these persons are problems that their culture and the dialect spoken in that culture can cause in trying to write standarc English, then it would be much easier for them to strengthen their composition skills. This is so beca some idea of the most common errors that they are likely to make.

"The content, form, and context of the speech determines whether it is of public concern." *Wallace v.* F.3d 1042, 1050 (5th Cir. 1996). In determining whether these statements are of public concern, the court also m speech occurred primarily in his role as a citizen or as an employee of the university. *Wallace*, 80 F.3d at 1050. that the content of plaintiff's statements involves a matter of public concern, the form and context of the speec the statements. As Dr. Gray himself acknowledges, the statements were made to his students, not to the public pedagogical public purpose of conveying certain principles related to the subject matter of his course of instı the statements were made in his classroom or in meetings with students, rather than in some other more public a these are statements made by Dr. Gray in his role as an educator, i.e., as an employee of the university, not in h *See generally Teague v. City of Flower Mound*, 179 F.3d 377 (5th Cir. 1999). Of course, even in his role as a enjoys certain First Amendment protections if he "was a whistle blower or attempted to report any wrongdoing authorities." *Wallace*, 80 F.3d at 1051. Certainly, he does not fall into either of these categories. Therefore, does not touch on a matter of public concern, it is not protected by the First Amendment.

The court turns next to plaintiff's claim of race discrimination under the Equal Protection Clause and 42 U Protection Clause directs that persons similarly situated should be treated alike." *Williams*, 189 F.3d at 705. Equal Protection Clause, plaintiff must allege that defendants intentionally discriminated against him becau

protected class. *See id.* The test is essentially the same under § 1981. *See Wallace,* 80 F.3d at 1047. The cour whether defendants' actions "amount[] to discrimination in violation of the Equal Protection Clause," *id.*, or *Mississippi State Employment Services,* 41 F.3d 991, 996 n.21 (5th Cir.) (race discrimination claim brought defense of qualified immunity), *cert. denied,* 515 U.S. 1131 (1995).

Dr. Gray states in his memorandum to the court that he "has demonstrated that the Defendants treate would have had he been a black professor"; yet, he points to nothing in the record that makes such a demonstra claim, plaintiff offers only conjecture and speculation, not evidence, to support this bald allegation of discr insufficient to prove a constitutional or statutory violation.

The court next addresses Dr. Gray's claim that he has a constitutionally protected property or liberty i the university and the duties assigned to him. The Due Process Clause of the Constitution protects as a prope the status of being an employee of the governmental employer in question together with the economic fruits that *Quives v. Campbell,* 934 F.2d 668, 671 (5th Cir. 1991) (citation omitted). Subjective impressions regarding the another is insufficient to state a deprivation of a property right. *Quives,* 934 F.2d at 671. "Although the gc specifically create a property interest in a noneconomic benefit–such as a particular work assignment–a prope generally does not create due process property protection for such benefits." *Jett v. Dallas Independent School I* n.3 (5th Cir. 1986). To create such a property interest, a plaintiff must show there has been a "'mutually explici the parties or a guarantee, contract, or statute creating an entitlement to the alleged "intangible, noneconomic b 754.

In this case, Dr. Gray knew from the inception of his employment with the university that his duties

research, or service assignment[s]." He was never told that his duties were strictly limited to classroom teach *Jett*, there was no mutually explicit understanding between the parties or a guarantee, contract, or statute wh entitlement to specific duties as an assistant professor of English. It is undisputed that he remained employe duration of his contract and was paid for his services. Under *Quives*, the Constitution guarantees him no mor

With regard to the issue of a protected liberty interest in his job, Dr. Gray argues that the effect of d thoroughly damage [his] reputation both on campus and in the academic community in general." He has absolu this allegation (indeed, he subsequently was employed with the University of Alabama) and makes this argu recognizing that, even if he did have such evidence, reputation alone is not a protected liberty interest. *See Con Currency*, 876 F.2d 1209, 1215 (5th Cir. 1989). He attempts to bypass this problem by arguing that defendan of his teaching duties and banning him from campus were of "such a dramatic nature that [they] amount employment...." The court disagrees. In assigning plaintiff an off-campus research project, defendants did no entitled to do by the terms of plaintiff's initial hiring. Therefore, because Dr. Gray can show neither a stigma a tangible interest," *Moore v. Otero*, 557 F.2d 435, 438 (5th Cir. 1977), he has suffered no violation of a Fourteenth Amendment.

Furthermore, because he has no property or liberty interest in either his job or the duties of that jo substantive due process claim. *See Fowler v. Smith*, 68 F.3d 124 (5th Cir. 1995). Even more importantly, the any reasonable juror would find that the defendants acted arbitrarily or capriciously in the actions taken agains

Therefore, because plaintiff cannot establish the violation of any constitutional or statutory right, the c reasonableness of defendants' actions in their individual capacities.

IV.

Official Capacity Claims for Prospective Relief

The above analysis of plaintiff's constitutional claims applies with equal force to the final issues rega claims against defendants for prospective relief. No additional discussion is necessary.

CONCLUSION

Having carefully considered the matter, the court finds that defendant Mississippi University for Wor Amendment immunity on all federal and state law claims in this case, except plaintiff's claims under Title VII Kupisch, Richardson, and Pieschel in their official capacities are entitled to Eleventh Amendment immunity c not on the federal claims for prospective relief. As to the remaining claim against MUW and the official capa VII, summary judgment is appropriate, as plaintiff has no evidence to support a charge of racial discrimination. are also entitled to summary judgment on the Title VII claim, as it is uncontested that they were not the statu Finally, the individual defendants and the official capacity defendants are entitled to summary judgment on al and statutory claims, as there are no genuine issues of material fact thereon and they are entitled to judgment a

An appropriate order and final judgment shall issue.

SO ORDERED this _____ day of November, 1999.

_____
SENIOR JUDGE